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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MERCEDES CAAMAL, Plaintiff and Appellant, v. WEDGEWOOD, LLC et al., Defendants and Respondents.	B287664 (Los Angeles County Super. Ct. No. BC629760)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Los Angeles Center for Community Law and Action, Noah Grynberg, Tyler Anderson, and Gina Hong, for Plaintiff and Appellant.

Dinsmore & Sandelmann, Frank Sandelmann and Joshua A. Valene, for Defendants and Respondents.

Mercedes Caamal (plaintiff) lost her property to foreclosure; the buyer at the foreclosure sale was Eagle Vista Equities, LLC (Eagle Vista), a company affiliated with Wedgewood, LLC (Wedgewood) and West Ridge Rentals, LLC (collectively, defendants). Eagle Vista obtained an unlawful detainer judgment against plaintiff for the residence she occupied on the property. Then, on the eve of trial in two related unlawful detainer actions for other units on the property, plaintiff and Eagle Vista stipulated that judgment would be entered against plaintiff in exchange for Eagle Vista's agreement to allow plaintiff to remain on the property for 60 days (during which time she could try to repurchase the property, if she could obtain sufficient funds to do so). Plaintiff never made a repurchase offer and she was evicted not long after the 60-day deadline. She then sued defendants, claiming Eagle Vista breached an express or implied obligation to negotiate with her to repurchase the property during the 60-day period. We consider whether summary judgment against plaintiff was warranted because no such obligation existed.

I. BACKGROUND

A. The Underlying Unlawful Detainer Proceedings

Plaintiff purchased a home in Rialto, California in or around 2006. Years later, plaintiff's lender foreclosed on the home. In September 2015, Eagle Vista purchased the property at a foreclosure auction for $284,000.

Within a few weeks of the foreclosure auction, defendants filed three unlawful detainer actions against plaintiff. (The property includes a main residence and two other units that

could be used as dwellings, and defendants filed unlawful detainer actions pertaining to each out of an abundance of caution.) In the first unlawful detainer action to go to trial, Wedgewood obtained a judgment for possession of the unit in which plaintiff was then living. Plaintiff thereafter participated in a protest demonstration at Wedgewood's headquarters.

During the demonstration, plaintiff, her husband, and their daughter spoke with Darin Puhl (Puhl), Wedgewood's vice president and chief operating officer. According to Puhl, the Caamals said they wanted to repurchase the property and he "gave them an idea of the value according to similar properties in the area." Puhl did not discuss a specific price with plaintiff and her family at this time. (The appellate record includes only Puhl's account of his conversations with the Caamals.)

Puhl met with plaintiff and her family again in early January 2016. According to Puhl, plaintiff sent him a mortgage prequalification letter reflecting a purchase price "far less than" the price range they previously discussed and Puhl "showed the Caamals what the property was worth and how it was justified, according to publicly available information, such as [real estate websites] Zillow and Trulia. The public information showed that the value of the Property was in excess of $400,000." Puhl maintains he "told them that $300,000 was not acceptable, but that [defendants] would sell the Property to them for $375,000."

A couple weeks later, the parties appeared in San Bernardino County Superior Court for a hearing on Eagle Vista's motions for summary judgment in the two remaining unlawful detainer cases.[1] The court indicated its tentative decision was to

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[1] Both parties submitted transcripts prepared from an audio recording of the hearing. Although identical in pertinent

deny the summary judgment motions on a "technicality" concerning the description of the property. The court noted the issue could be cured and "easily overcome" by Eagle Vista at trial (which was scheduled to take place four days later) and ordered the parties to return in the afternoon for a mandatory settlement conference.

The parties conferred off the record during that conference and the court then stated on the record "what the discussion has been." Addressing plaintiff directly, the court explained Eagle Vista had "already won on the main case," such that "the question is whether they evict you immediately or give you an opportunity, as your attorney has requested, to give you time to get some money to get a loan so you can buy your property back. You've been there a long time. They're willing to work with you, but there has to be some limitation, and the proposal that we had been discussing is, so that both sides are protected, let you stay there for 60 days to close escrow. If an escrow isn't closed in 60 days, then you'll be evicted, rather than today or tomorrow or whatever, at least in 60 days. [¶] But if you had an escrow through, had the funding, then you can get your property back. [¶] If escrow needs a few more days over 60 and you've got most of it all done, they're willing to work with you a little bit, but they're not going to just wait 60 days and then for you to come in on the 59th day and say, I now have some funding. I want another 60 days. We have to put a stop to how long this case can be continued. [¶] . . . [¶] They can ask the sheriff to hold off on [evicting you based on the first judgment], if you're willing to sign

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substance, there are minor differences between the transcripts. We quote from the transcript submitted by defendants.

a stipulation to the effect that on the other two lawsuits you agree that you can be evicted, but there will be a stay to give you time for 60 days to close—to start and close an escrow to fund it so you can buy it back and have your place."

In response to the court's summary of the discussions, plaintiff said she "would accept the court's proposed stipulation of 60 days to close escrow and keep the house." The court asked counsel whether a court reporter was needed to "write it down, or is this sufficient?" Counsel for defendants interjected, stating: "I don't know if this court has any of the forms, but there are forms that the county regularly uses for unlawful detainers, and we can put this into writing . . . ." Some further discussion ensued regarding terms that counsel for defendants wanted to be part of the stipulation, and the court ultimately instructed counsel for defendants to "contact your staff and get an email, write it up."

Recalling the matter later that same day, the unlawful detainer court stated it had received written stipulations for entry of judgment signed by both parties. The stipulations awarded possession of the two remaining units on the property to Eagle Vista, with a writ of possession to issue immediately, but provided there would be no lockout of plaintiff before March 21, 2016. In a section of the form stipulations provided to allow the parties to stipulate to additional terms, the stipulations read in full as follows: "[Plaintiff] shall vacate the premises by 11:59pm on March 20, 2016, leaving the unit clean and without causing damage, and removing all personal property. Any items remaining in the premises shall be deemed as trash and may be destroyed without further notice or delay. Pursuant to *In re Perl* [(9th Cir. 2016) 811 F.3d 1120], [Plaintiff] agree[s] that no Bankruptcy stay shall apply to this case or stop the eviction.

[Plaintiff] waive[s] all rights to appeal, and waive[s] any other stay of lockout. [Plaintiff] represent[s] that only members of [Plaintiff's] immediate family reside in the premises, and there is no tenancy or right of possession of any other party. The parties agree that for [the prior already-complete unlawful detainer action], these same terms and conditions apply, and [Eagle Vista] will instruct [the] Sheriff for no lockout prior to March 21, 2016[,] for that case also." After confirming on the record that both sides agreed to these terms, the court accepted the stipulations.

B. Efforts to Repurchase the Property Shortly Before the End of the Stipulated Forbearance Period

So far as the record reveals, plaintiff made no attempt to contact defendants until "approximately three weeks before March 20, 2016," when plaintiff asserts she "tried to contact Defendants by phone . . . but Defendants never responded." Then, five days before the expiration of the 60-day stipulated period (March 15, 2016), one of plaintiff's daughters sent an email to Puhl "following up" on a conversation in which the daughter's aunt apparently told one of Puhl's colleagues that the family had been prequalified for a loan: "He said he was going to let you know and see when we can have a meeting. We're open any[ ]day to meet." Puhl did not reply.

The following day, plaintiff's attorney sent an email to the attorney who represented Eagle Vista in the unlawful detainer actions. He attached a letter from Bay Equity Home Loans (Bay Equity) stating plaintiff's cousins had been prequalified (though still subject to underwriter approval) to borrow $289,500 to purchase the property for $300,000. The attorney emphasized plaintiff's cousins "actually qualify for a higher amount than has

been indicated in the letter" and said they were willing "to negotiate regarding the fair market value of the property if [defendants] ha[d] a different opinion as to value." Eagle Vista's attorney forwarded the prequalification letter to his client, and no response was forthcoming.

Two days later, on March 18, 2016, Kuhns sent an email to Puhl attaching the same Bay Equity prequalification letter as well as a letter from plaintiff and her husband to Geiser. In the letter to Geiser, plaintiff and her husband explained the prequalification letter was addressed to family members "who are in the strongest position to qualify" and, "due to the credit challenges [plaintiff and her husband] face as foreclosed homeowners," efforts to obtain financing had taken longer than they hoped. They further explained they requested a prequalification letter reflecting "what [they] underst[oo]d to be the approximate value of the home," but indicated they "would like to meet with [Geiser] as soon as possible to determine the exact value and discuss a mutually agreeable sale price." They reiterated that, based on "discussions with the lender," their "family's income [was] sufficient to qualify for a higher loan amount than that which appears on the prequalification letter." Defendants did not reply to the email.

On March 23, 2016—i.e., after the 60-day stipulated forbearance period had already expired—plaintiff and others again came to Wedgewood's offices and Puhl spoke with Kuhns. Kuhns told Puhl that plaintiff's family members qualified for a loan to finance a purchase price of "at least $380,000" and plaintiff was "willing to negotiate regarding the purchase price." Kuhns followed up by faxing Puhl a second prequalification letter from Bay Equity, again addressed to plaintiff's cousins, reflecting

a $366,700 loan and $380,000 purchase price. Puhl did not respond to the fax.

Plaintiff and her family were evicted from the property on March 30, 2016.

C. Plaintiff's Lawsuit Alleging a Failure to Negotiate, and Summary Judgment for Defendants

In a first amended complaint, plaintiff asserted causes of action against defendants for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.). The gist of the lawsuit is that defendants reneged on an asserted promise and obligation "to negotiate a repurchase in good faith if [plaintiff] diligently sought and obtained financing."

Defendants moved for summary judgment. The summary judgment motion encapsulated its argument as follows: "Plaintiff claims that the [s]tipulation obligated [d]efendants to negotiate a price with her and sell her the house, but the recorded stipulation clearly contains no such promise or agreement. The stipulation was merely that judgment would be entered for [d]efendants, execution of the judgments would be stayed for [60] days to allow [p]laintiff to close escrow on the [p]roperty, and that if [p]laintiff did not close escrow within [60] days[, plaintiff] would voluntarily vacate the [p]roperty. Plaintiff did not open, much less close, escrow within [60] days."

The trial court granted defendants' motion for summary judgment. The court found that "even if there was an arguable agreement to negotiate in order to close escrow, and even assuming [d]efendants breached on or before March 20, 2016[,] by

somehow 'failing to negotiate,' [p]laintiff has not shown that escrow would have timely closed under the undisputed circumstances where [plaintiff's] prequalification letter was $75,000 short of the previously agreed sale price and which was delivered just five days before the agreed deadline."

II. DISCUSSION

Plaintiff contends the parties stipulated that defendants would "work with" her, and she further contends this "work with" term of the stipulation created an enforceable express or implied obligation to negotiate her repurchase of the property. We assume for the sake of argument that the stipulation should be understood to include the unlawful detainer court's oral recitation of off-the-record discussions (even though counsel for defendants did not assent to that summary on the record). But the "work with" language that is at the heart of all of plaintiff's arguments on appeal referred only to defendants' willingness to agree to a short extension of the time to close escrow if the parties had already opened escrow and the process was nearly complete. In other words, regardless of whether Puhl's pre-stipulation statements concerning defendants' minimum price obviated the need for further price negotiations, nothing in the stipulation obligated defendants to respond to what they saw as an inadequate overture during the 60-day grace period. Rather, the agreement only required defendants to refrain from evicting plaintiff while she put together her best offer, which they could accept or reject—but which never came. Summary judgment for defendants was proper.

A. Appellate Review of Summary Judgment

Summary judgment is proper where it appears no triable issues of material fact exist and judgment is warranted as a matter of law. (Code of Civ. Proc., § 437c, subd. (c); *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) As the moving party, the defendant must show "one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code of Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) The moving defendant "bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if [the defendant] carries [its] burden of production, [it] causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar*, *supra*, at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*)

On appellate review, we "independently examine[ ] the record and consider[ ] all of the evidence set forth in the moving and opposing papers except that as to which objections have been made and sustained." (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 285.) We view the evidence and all inferences "reasonably drawn therefrom" in favor of the party opposing summary judgment. (*Aguilar*, *supra*, 25 Cal.4th at p. 843.) "Although the trial court may grant summary judgment on one basis, this court may affirm the judgment under another[;] . . . it

reviews the ruling, not the rationale." (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.)

B. The Summary Judgment Record Establishes Plaintiff Cannot Prove an Express or Implied Agreement to "Negotiate"

1. Express agreement

Plaintiff contends the unlawful detainer court's two references to defendants' willingness to "work with" her amount to an agreement to negotiate regarding the price of the property. Such an agreement can be enforceable. "A contract to negotiate the terms of an agreement is not, in form or substance, an 'agreement to agree.' If, despite their good faith efforts, the parties fail to reach ultimate agreement on the terms in issue the contract to negotiate is deemed performed and the parties are discharged from their obligations." (*Copeland v. Baskin Robbins U.S.A.* (2002) 96 Cal.App.4th 1251, 1257.)

But defendants' obligation to "work with" plaintiff did not extend to any and all aspects of a potential transaction. In reciting the terms of the stipulation, the trial court emphasized defendants' willingness to work with plaintiff in the context of the 60-day deadline to close escrow: "They're willing to work with you, but there has to be some limitation"; "If escrow needs a few more days over 60 and you've got most of it all done, they're willing to work with you a little bit . . . ." By its plain meaning in context, the "work with you" term of the stipulation only obligated defendants to extend the deadline to close escrow (i.e., not evict plaintiff) if escrow were opened before the 60th day and set to close shortly thereafter. It did not obligate defendants to negotiate before plaintiff made a purchase offer; it simply made

the 60-day period to close escrow that would open upon acceptance of such an offer somewhat flexible if plaintiff by then had "most of it all done."

Plaintiff nevertheless insists any construction of the "work with you" provision that does not apply to "the myriad negotiations and agreements that are part of the escrow process" makes the stipulation intolerably one-sided. Even without a guarantee that defendants would acknowledge or counter an offer from plaintiff, however, the stipulation bought her needed time to obtain financing and make her best offer while continuing to live on the property rent free. This was a real benefit to plaintiff, particularly in the circumstances under which she agreed to the stipulation. As the court explained, Eagle Vista had a writ of possession ready to execute after completion of the first unlawful detainer trial and plaintiff had very little leverage with trial imminent in the second and third cases. That is not an intolerably one-sided deal.

2. Implied agreement

The trial court concluded the stipulation in the unlawful detainer actions did not include an implied agreement to negotiate price because the undisputed evidence—Puhl's declaration—established defendants had already stated their price. The relevant portion of Puhl's declaration was not cited in either defendant's separate statement of undisputed material facts or memorandum of points and authorities in support of summary judgment.

Regardless of whether the trial court properly relied on Puhl's declaration to conclude the parties discussed a price prior to the stipulation (see, e.g., *Marshall v. County of San Diego*

(2015) 238 Cal.App.4th 1095, 1107 ["'We will affirm a summary judgment if it is correct on any ground . . . .'"]), the stipulation's silence as to price did not impliedly obligate defendants to negotiate that or any other term. "'Implied terms are not favored in the law, and should be read into contracts only upon grounds of obvious necessity. [Citation.] A court may find an implied contract provision only if (1) the implication either arises from the contract's express language or is indispensable to effectuating the parties' intentions; (2) it appears that the implied term was so clearly within the parties' contemplation when they drafted the contract that they did not feel the need to express it; (3) legal necessity justifies the implication; (4) the implication would have been expressed if the need to do so had been called to the parties' attention; and (5) the contract does not already address completely the subject of the implication. [Citations.]' [Citations.]" (*Grebow v. Mercury Ins. Co.* (2015) 241 Cal.App.4th 564, 578-579.)

Defendants' only duty under the stipulation was to refrain from locking plaintiff out of the property for 60 days (or perhaps a bit longer if an escrow was about to close). This gave plaintiff an opportunity to obtain financing and make her best offer, which defendants could then accept or not. The fact that the stipulation required plaintiff to close escrow to avoid eviction does not make negotiations over price (or any other term) necessarily an element of the parties' intentions. If plaintiff put together a sufficiently compelling offer, no contractual agreement was needed to prompt a response from defendants.

Instead, the "close escrow" provision protected defendants in the event they accepted an offer from plaintiff that ultimately failed to close. It made defendants more likely to negotiate with

plaintiff even though it did not *obligate* them to do so.[2] None of the cases plaintiff cites involving implied agreements to negotiate suggest there was such an obligation here.[3]

In *Brehm v. 21st Century Ins. Co.* (2008) 166 Cal.App.4th 1225 (*Brehm*), for instance, the Court of Appeal rejected an insurance company's contention it had no implied obligation "to honestly assess [an insured person's] claim and to make a reasonable effort to resolve any dispute" simply because it had a right to compel arbitration. (*Brehm*, *supra*, at p. 1242.) To the contrary, the insurance company's right to compel arbitration in the event of a dispute implied an obligation to first engage in negotiations until an intractable dispute arose. (*Ibid.*) Here, by contrast, plaintiff did not have a right to close escrow under specific conditions from which attendant rights and duties may be inferred. She had a right not to be evicted for 60 days while she attempted to put together an offer defendants would find acceptable.

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[2] If the stipulation provided plaintiff could avoid eviction if she submitted and defendants accepted an offer to repurchase the property within 60 days, defendants would have risked having to bring a new unlawful detainer action in the not-unthinkable case that plaintiff's financing fell through. The "close escrow" provision allowed defendants to accept an offer from plaintiff without taking on such risk.

[3] Furthermore, plaintiff never articulates what form this alleged duty to negotiate should have taken. Had plaintiff made a purchase offer and defendants indicated they received it but made no further response, that strikes us as the equivalent of a "thanks, but no thanks" response that presumably would satisfy even plaintiff's conception of "negotiate."

The other case plaintiff cites in her discussion of this issue, *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549 (*Saltonstall*), is not remotely relevant. The plaintiffs in *Saltonstall* contended the City of Sacramento violated the California Environmental Quality Act (CEQA) by, among other things, "prematurely commit[ting] itself to approving [a] downtown arena project before completing its environmental review." (*Saltonstall*, *supra*, at p. 557.) The Court of Appeal ruled the city did not prematurely commit itself by executing a "preliminary nonbinding term sheet" before completing its environmental review because this was, "[i]n essence, . . . an agreement to negotiate." (*Id.* at p. 570.) The term sheet expressly noted "it set forth 'the process and framework by which the parties agree[d] to negotiate definitive documents and potential approvals to be considered by the City regarding the potential location, financing, ownership, design, development, construction, operation, use' and other issues related to the project." (*Ibid.*) Even if *Saltonstall* involved an effort to enforce an agreement, as opposed to a challenge to the propriety of one party executing the agreement, it would not be applicable here. The term sheet at issue in *Saltonstall* included an express agreement to negotiate. The stipulation in this case did not set forth a "process and framework" to negotiate plaintiff's repurchase of the property—it merely defined the time period during which such an agreement must close.

Because defendants did not have plaintiff evicted until after she failed to close escrow within 60 days and they were under no implied (or express) obligation to do more than they did (and certainly no obligation to undertake what would have been

pre-offer negotiations), there is no triable issue of material fact as to plaintiff's breach of contract cause of action.

D. Summary Judgment Was Proper

Plaintiff contends her other causes of action for breach of the implied covenant of good faith and fair dealing, promissory estoppel, and violation of the Unfair Competition Law remain viable because, even if defendants were not actually required to negotiate with plaintiff, they were at least required to respond to her (and her surrogates') communications. We hold to the contrary.

Though some of the elements of the remaining causes of action may differ from the elements of breach of contract, what we have already said regarding the breach of contract claim establishes plaintiff has no prospect of succeeding on the remaining claims. (See, e.g., *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 ["If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated"]; *Los Angeles Equestrian Center, Inc. v. City of Los Angeles* (1993) 17 Cal.App.4th 432, 448 [summary adjudication of promissory estoppel cause of action properly granted where there was no evidence of a promise that induced reliance]; *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1186-1187 [Unfair Competition Law claim predicated on another failed claim likewise failed].) The stipulation at most provided plaintiff an opportunity to

repurchase the property (without being evicted in the interim), and that is what she got.

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.